



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 29, 1997

Mr. Blake Hansen  
McMahon, Tidwell, Hansen, Atkins & Peacock, P.C.  
4001 East 42<sup>nd</sup>, Suite 200  
Odessa, Texas 79762

OR98-1068

Dear Mr. Hansen:

You have asked if certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114383.

You represent the Ector County Independent School District (the "district"), which received a request for an audiotape recording of a meeting of the district's board of trustees. You indicate that the responsive audiotape is a recording of a closed, executive session of the district's board of trustees. You assert that the responsive audiotape is therefore confidential under chapter 551 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure under the Open Records Act "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 551.146 of the Government Code provides that it is a criminal offense to disclose to a member of the public an audiotape recording of a closed meeting. An audiotape recording of a closed meeting is available for public inspection and copying only under a court order. Gov't Code § 551.104; Open Records Decision No. 495 (1988) at 4 (audiotape recordings of closed meetings are confidential unless a court rules otherwise). Thus, section 551.146, in conjunction with section 552.101, protects an audiotape recording of a closed meeting from public disclosure under the Open Meetings Act. We agree that the audiotape recording of the board of trustees' closed executive session is confidential by law, and therefore may not be disclosed to the requestor.

You assert that the audiotape recording at issue is not a student education record under the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g. "Education records" are records that (1) contain information directly related to a student; and (2) are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A). *See also*

Open Records Decision Nos. 462 (1987), 447 (1986). FERPA denies federal funds to an educational agency or institution if it has a policy of denying parents the right to inspect and review the "education records" of their children. 20 U.S.C. § 1232(g).

We note that this office did not review the responsive audiotape recording, nor does it have authority to do so. Open Records Decision No. 495 (1988) at 4 (Open Meetings Act provisions "remove certified agendas and tapes of executive sessions from review by the attorney general under the Open Records Act"). We also note that the Open Records Act does not require a governmental body to request a decision from the attorney general regarding information subject to FERPA. Open Records Decision No. 634 (1995) at 5. If you have questions concerning the applicability of FERPA in this instance, you might wish to contact the Family Policy Compliance Office of the United States Department of Education.

You also inform this office that the closed executive session was held pursuant to section 551.082 of the Government Code, which provides that the board of trustees may hold a closed session to consider a student disciplinary matter. You state that the student has now appealed the disciplinary action pursuant to section 7.057 of the Education Code. Section 7.057(c) provides that the appeal review will be based on the record developed at the district level. Such a record includes an audible electronic recording or written transcript of oral testimony or argument. Educ. Code. § 7.057(e). You also refer to 19 T.A.C. section 157.1074, which provides that the school district must file a record of the proceedings with its answer in the appeal. We note that section 157.1074(e) provides that if the submitted record does not contain a certified transcript of the local hearing, "the commissioner may either reverse the school district's decision without a hearing, or conduct a hearing to receive evidence concerning all material facts in dispute." We again note that the audiotape recording of the closed executive session is confidential by law and may be released to the requestor only under court order.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Ruth H. Soucy", written over a horizontal line.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: #114383

Enclosures: Open Records Decision No. 495 (1988)  
Open Records Decision No. 634 (1995)

cc: Mr. Lonnie Hobbs  
6010 Highway 191, Suite 100  
Odessa, Texas 79762  
(w/Open Records Decision No. 495 (1988); Open Records Decision No. 634 (1995))